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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,112	07/02/2003	Jacob Fraden		3389

7590

05/21/2004

Jacob Fraden, Advanced Monitors Corp.  
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San Diego, CA 92121

EXAMINER
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VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Applicant(s)

10/612,112

Applicant(s)

FRADEN, JACOB

Examiner

Gail Verbitsky

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: perhaps applicant should replace "6347234" (Fraden) in page 2, line 10 with a correct patent number

--6347243--. Appropriate correction is required.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "randomly distributed cavities" must be shown or the feature(s) canceled from the claim(s) 4, because it appears that the cavities shown in Fig. 5 are not random but symmetrically organized. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-3, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Jang (U.S. 5645350).

Jang discloses in Fig. 3 a probe for a tympanic thermometer intended to be inserted into a patient's ear/ orifice, the probe has an outer surface 4 which is shaped to contain at least one cavity/ annular gap 18 between the outer surface and a skin 150 permanently attached to the outer surface of a housing 11 by means of rings/ ridges 43. The cavities A, B are separated from each other by said ridges 43. Jang states that such a construction would minimize a heat transfer between the housing 11 portions, such will provide a low thermal conductivity. Jang also states that a probe cover 2 is made of a polyethylene (polymer) that envelopes the outer surface 4 and the skin 150. (the numerals A-B have been added by the examiner, see attachment to the Office action)

5. Claims 1-2, 5, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukura et al. (U.S. 6109782) [hereinafter Fukura].

Fukura discloses in Fig. 2 a medical probe device to be inserted in a body cavity/ orifice, the device comprising an outer surface 32, covered with a skin 20 permanently attached to it, the outer surface 32 having a circular indentation/ indentations, a space 38 formed by the indentations is filled out/ covered with a heat insulation material (layer) inherently having a low thermal conductivity. The skin/ probe 20 is made of a synthetic resin (low thermal conductivity material).

The method steps will be met during the normal method of insulating the probe as stated above.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jang.

Jang discloses the device as stated above in paragraph 4.

Jang does not teach that the cavities are randomly distributed, as stated in claim 4.

With respect to making a shape of the outer surface such that the cavities are randomly distributed along the outer surface, as stated in claim 4, this limitations, absent any criticality, is only considered to be an obvious modification of the shape of the outer surface disclosed by Jang because the court has held that a change in shape or configuration, without criticality, is within the level of skill in the art as the particular shape claimed by applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the outer surface of the device disclosed by Jang, so as to have randomly distributed cavities, in order to minimize manufacturing costs by eliminating a process involving precise measurements of distances between the cavities.


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### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

  
Gail Verbitsky  
Primary Patent Examiner, TC 2800

May 11, 2004